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09/919,194	07/31/2001	Marie S. Chan	5257A	3976

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Milliken & Company  
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EXAMINER

EINSMANN, MARGARET V

ART UNIT PAPER NUMBER

1751

DATE MAILED: 05/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/919,194

Applicant(s)

CHAN ET AL.

Examiner

Margaret Einsmann

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 18 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 11-14 and 16-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 11-14, 16-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/18/04 has been entered. Accordingly claims 11-14,16-19 are pending

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 11-14, 16-19 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. Definitions of certain variables, critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976).

The structure of formula A in claims 1 and 11 lack a definition of variables a1, a2, a3, a4, a5, b1, b2, b3, b4, and b5. The description of formula A in the specification is the same as in the claims. Accordingly this critical information is neither in the specification or in the claims. Therefore it is impossible to determine the scope of the claimed subject matter.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11-14, 16-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The definition of variables a1-a5 and b1-b5 are missing from formula A. However, on page 18, which is after formula of claim 1, definitions are given of  $a_i$  and  $s_i$  which are not variables in formula A. Those variables are in formula (B). However the same definitions are repeated below formula (B) they are both above and below formula (B) on page 18. The same situation exists in claim 11, the other independent claim.

Applicant has not told why there is a variable  $s_i$  defined for formula A and formula B

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 11-12, 16-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Hart et al., US 6,524,494.

Hart discloses a process of dewrinkling and providing rewrinkling resistance o a fabric by providing a composition comprising ethoxylated castor oil as claimed in claim 15. Table 2 in column 7 lines 19-37 discloses compositions comprising CREMOPHOR H60 and CREMOPHOR H40, both of which are ethoxylated castor oils, which applicant discloses as within the scope of the independent claims. In example 4 on page 9, two of the compositions listed on table 2 as comprising ethoxylated castor oil were evaluated for dewrinkling effect. Accordingly the limitations of the claims are met. Regarding the limitation of the HLB, this office is not equipped to evaluate such a property, so since applicant is using the same ingredient as claimed, it is assumed to have the same physical properties since a compound cannot be separated from its properties.

### ***Response to Amendment***

In response to the above rejection, applicant has removed alkoxylated fatty acid esters from claim 14 and canceled claims 5 and 20. That has mooted the rejection as applied to claim 14 and 19 but it has not mooted the rejection as applied to the remaining claims. While the entire scope of claim 11 cannot be determined, applicant has clearly disclosed the use of ethoxylated castor oils as being within the scope of the claimed subject matter.

Claims 11,12,14,16,17 and19 are rejected under 35 U.S.C. 103(a) as being unpatentable over The Proctor and Gamble Company, WO 99/55948. Wrinkle reducing compositions are provided which comprise polyethylene-polypropylene block polymers which fall within the scope of the claimed subject matter. Note applicant's list of preferred lubricant/plasticizer components on page 12 of the specification. Three of them are Pluronic surfactants. Note page 15 of P and G: The Pluronic surfactants are listed from lines 8-18 as optional additives in patentee's wrinkle reducing compositions. Patentee has no working examples comprising a Pluronic surfactant. It would have been obvious to the skilled artisan to use the Pluronic surfactants in the compositions in the working examples because patentee teaches that said surfactants are equivalent to the wetting agents used in the working examples. Regarding the limitation of the HLB, this office is not equipped to evaluate such a property, so since applicant is using the same ingredient as claimed, it is assumed to have the same physical properties since a compound cannot be separated from its properties.

Claims 11-14,16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morales, US 6,102,973. Morales discloses a method of producing wash and wear properties in which he incorporates a high density polyethylene in an aqueous emulsion with cationic emulsifiers (C1) or with nonionic emulsifiers (C2), as well as a wetting agent (A) which is a linear alcohol ethoxylate , col 2 lines 66-67, col 3 lines 5-6. The patent differs from the claimed subject matter since patentee does not state that the composition "provides rewrinkling resistance." It would have been obvious to one

skilled in the art that when a garment has wash and wear properties it resists wrinkling; that is it does not need to be ironed after laundering. Accordingly Morales indeed provides garments which will not wrinkle by applying thereto a composition comprising the ingredients as claimed.

***Response to Amendment***

Applicant has canceled claims 15 and 20. Accordingly all of the rejections applied to claims 15 and 20 have been overcome.

***Response to Arguments***

Applicant has argued the rejection of claims 11-14, 16-19 under the first and second paragraph of 112 by stating that the definition of the compounds within the claims depend on a mathematical series wherein the labels of  $a_i$  and  $b_i$  provide the proper basis of these numerical designations; the  $i$  within each of these series implies an initial starting point for each different  $a$  or  $b$  value. These arguments filed 9/12/2003 have been fully considered but they are not persuasive. There is no definition for  $a_i$  except that it is  $\geq 8$ ; there is no indication as to how the other  $a$  values are derived from  $a_i$ . Additionally,  $a_i$  is defined in terms of  $b_i$ ; but since there is no definition of  $b_i$ , that definition is flawed. Additionally, there is no statement in the claims of how each of  $a_1$ - $a_5$  is related to  $a_i$ ; regarding the  $b$  values, there is no definition of  $b_i$  in the claim. There is also no definition of the values  $s_1$ - $s_5$ .

Applicant arguments presented with the filing of the RCE regarding the above rejections are cumulative to those already presented. Since the variables are not

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definitively defined in either the specification or claims, the above rejections are maintained.

Applicant argues the rejections over Morales and P&G by stating that the claimed compositions are non-film forming. Yet applicant 's preferred compositions comprise polyethylene wax, which is a film forming component. Applicant calls his composition a plasticizer. A plasticizer is a plastic forming composition. How are the claimed compositions both a plasticizer and a non-film forming composition? All of the references cited comprise one of the specific plasticizers recited in the claims. Accordingly they all provide the same dewrinkling effects as claimed. MPEP 2111.03 states, "The transitional phrase "consisting essentially of" limits the scope of a claim to the specified materials or steps **"and those that do not materially affect the basic and novel characteristic(s)" of the claimed invention.** In re Herz, 537 F.2d 549, 551-52, 190 USPQ 461, 463 (CCPA 1976) (emphasis in original) (Prior art hydraulic fluid required a dispersant which appellants argued was excluded from claims limited to a functional fluid "consisting essentially of" certain components. In finding the claims did not exclude the prior art dispersant, the court noted that appellants' specification indicated the claimed composition can contain any well-known additive such as a dispersant, and there was no evidence that the presence of a dispersant would materially affect the basic and novel characteristic of the claimed invention. The prior art composition had the same basic and novel characteristic (increased oxidation resistance) as well as additional enhanced detergent and dispersant characteristics. In the instant case, the prior art compositions do not materially affect the basic and novel



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characteristic of the claimed invention since they produce the same dewrinkling effect as claimed.

Regarding the rejection over P and G, applicant argues that the reference compositions include undesirable components, and the reference provides no motivation to select the same components required for applicant's method. Patentees compositions include applicant's and said compositions have the same dewrinkling effect. No motivation is needed to select a composition that is taught in the prior art to have been used for the same purpose.

Regarding Morales, applicant's state that there is no teaching in Morales that spraying will accomplish the same dewrinkling effects as the immersion method of Morales. The methods are alternative coating methods since the compositions are applied and then dried thus leaving a coating that provides the same dewrinkling property. If applicant disagrees evidence must be presented.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret Einsmann whose telephone number is 571-272-1314. The examiner can normally be reached on 7:00 AM -4:30 PM M-Th and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Margaret Einsmann  
Primary Examiner  
Art Unit 1751

May 20, 2004